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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,500	10/01/2003	Raymond Connor	21029-00225-US1	4245

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,500

Applicant(s)

CONNOR ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/958,901.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

It is noted that the instant application is dependent from parent case 09/958,901 which claims foreign priority to the received British Application 9908602.7 filed on April 15, 1999, however, since there is missing information, specifically the PCT information, in the bibliographic data sheet, the Foreign application was not within one year and does not meet the requirements. If this is in error steps should be taken to correct the bibliographic data sheet and supply the proper information to properly link the Foreign priority document to the instant application in the proper manner as set forth in the MPEP, so that such can be used to determine the applicability of prior art based upon date. It should be noted that due to this discrepancy the effective date of the instant application is January 22, 2002, the date of filing of the parent application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Yu. Due to the effective priority date as set forth above, there is some confusion as to whether the first or second paragraph of subsection e above should be considered since if the PCT is intended to be included when considering the priority document, then the PCT has a filing date of April 14, 2000, therefore both subsection e's have been included above at this time to speed up prosecution. The patent to Yu discloses the recited liner where the use of such for water supply is merely intended use, comprising a tubular liner formed of a polyolefin elastomer/plastomer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Bosiers. The patent to Yu discloses all of the recited structure with the

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exception of disclosing the molecular weight distribution, the percent of an interpolpolymer used, using a comonomer with 3-20 carbon atoms, using another comonomer from the list of claim 22, and disclosing clearly the use of a linear ethylene interpolpolymer , however it does set forth the use of linear ethylene formed from various monomers . which suggests an interpolpolymer even though such is not clearly defined and mention is made that molecular weight distribution is considered when forming the material. It is considered merely a choice of mechanical expedients to use routine experimentation to arrive at optimum values of molecular weight distribution as such was at least a consideration in forming the material in Yu and such would only require routine skill in the art to arrive at optimum working values. The patent to Bosiers discloses that it is known to modify polyolefins to balance their sealing properties by using linear ethylene interpolpolymers formed of a percentage falling within an overlapping range of that set forth in claim 20, where the comonomer can have 3-20 carbon atoms, and can include many of the materials listed in claim 22. It would have been obvious to one skilled in the art to modify the linear ethylene used in Yu by substituting the material set forth in Bosiers having a linear ethylene interpolpolymer of specific amounts, and including comonomers of 3-20 carbon atoms and including 1-butene, propylene, 1-hexene and others as suggested by Bosiers as such would improve the characteristics of the liner to give it more balanced sealant properties.

Conclusion

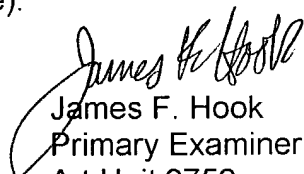
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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Cook, Kehr (413 and 090), Yoshida, Kondo, Ek, Patel, Knauf and Mertzal disclosing state of the art plastic materials and liners.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3752

JFH